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April 12, 2024

**By eFile**

Hon. Margaret M. Garnett, U.S.D.J.  
United States District Court  
Southern District of New York  
40 Foley Square, Courtroom 906  
New York, New York 10007

Re: BDS III Mortgage Capital G, LLC v. Martin NV II, Inc.  
24-cv-01826-MMG

Your Honor:

We represent plaintiff BDS III Mortgage Capital G, LLC ("BDS III") and write to respectfully request a brief adjournment of the initial pretrial conference scheduled for May 1, 2024. See ECF 7.

We make this request to ensure that, in advance of the conference, defendant Martin NV II, Inc. ("Martin NV II") has appeared and counsel have had sufficient time to meet-and-confer and make the necessary pre-conference submissions. This complication arises from the fact that Martin NV II (intentionally or otherwise) did not appoint an agent for service of process as required under the parties' controlling agreement. Martin NV II's non-compliance in this regard has complicated our efforts to effect service.

This is a breach of guaranty action. The guaranty required Martin NV II to appoint CT Corporation as its registered agent for service of process in New York. Immediately after commencing this action on March 11, 2024, we attempted to effect service of the summons and complaint on Martin NV II via CT Corporation. CT Corporation accepted the documents on March 12, 2024. However, on March 22, 2024 CT Corporation advised that it had not been designated as Martin NV II's registered agent and therefore could not accept service on its behalf.

We were surprised by this unusual turn of events. Nonetheless, we promptly pivoted to the alternative means of service available under the terms of the guaranty. The guaranty provides that if "for any reason" no agent for service of process is available, under the circumstances presented here

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we could effect service by mailing the summons and complaint to Martin NV II's offices in Las Vegas, Nevada. On March 25, 2024, we did so. See ECF 9.

Consistent with the terms of the guaranty, Martin NV II's deadline to respond to the complaint is now April 24, 2024 -- the same day on which the parties must e-file a joint letter and proposed case management plan in advance of the scheduled May 1 conference. Assuming Martin NV II answers, moves or otherwise responds to the complaint by April 24, a brief adjournment of the May 1 conference will allow the parties to meet and confer and make the required pre-conference submissions.

This is the first request to adjourn the initial pretrial conference. The requested adjournment will not impact any other scheduled dates in this action. We are available to proceed with the conference on May 15, 2024 and May 17, 2024 or any other date convenient for Your Honor.

Thank you in advance for your consideration.

Respectfully,

*/s/ William S. Gyves*

William S. Gyves

cc: Martin NV II, Inc. (via FedEx)

Request GRANTED. The initial pretrial conference, which is scheduled for May 1, 2024, is hereby adjourned to **Wednesday, May 15, 2024, at 11:30 a.m.** The joint letter and proposed civil case management plan described in Dkt. No. 7 are due by **May 8, 2024**. The Clerk of Court is directed to terminate Dkt. No. 10.

SO ORDERED. Date 4/17/2024



HON. MARGARET M. GARNETT  
U.S. DISTRICT JUDGE